

108 CV 5239  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SWISS MARINE SERVICES S.A.,

Plaintiff,

- against -

HERMITAGE UK LTD. and HERMITAGE  
RESOURCES LIMITED,

Defendants.

**VERIFIED COMPLAINT**

Plaintiff, SWISS MARINE SERVICES S.A. (hereinafter referred to as "Plaintiff"), by and through its attorneys, Lennon, Murphy & Lennon, LLC, as and for its Verified Complaint against the Defendants, HERMITAGE UK LTD. (hereinafter referred to as "Hermitage UK") and HERMITAGE RESOURCES LIMITED (hereinafter referred to as "Hermitage Resources"), (hereinafter collectively referred to as "Defendants"), alleges, upon information and belief, as follows:

1. This is an admiralty and maritime claim within the meaning of Rule 9(h) of the Federal Rules of Civil Procedure and 28 United States Code § 1333. This claim involves the breach of maritime contract of charter. This matter also arises under the Court's federal question jurisdiction within the meaning of 28 United States § 1331 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (9 U.S.C. § 201 *et seq.*) and/or the Federal Arbitration Act (9 U.S.C. § 1 *et seq.*).

2. At all times material to this action, Plaintiff was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law and was at all material times the owner of the motor tanker "GLENBULK A" (hereinafter the "Vessel").



3. Upon information and belief, Defendant Hermitage UK was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law, and was at all material times the Charterer of the Vessel.

4. Upon information and belief, Defendant Hermitage Resources was, and still is, a foreign corporation, or other business entity, organized under, and existing by virtue of foreign law.

4. By a charter party dated February 24, 2006, Plaintiff voyage chartered the Vessel to Defendant Hermitage UK for the carriage of "up to full cargo ½ grades fuel oil."

5. Plaintiff delivered the Vessel into the service of the Defendant Hermitage UK and fully performed all duties and obligations under the charter party.

6. A dispute arose between the parties regarding Defendant Hermitage UK's failure to pay demurrage<sup>1</sup> costs due and owing to Plaintiff under the charter party contract.

7. As a result of Defendant Hermitage UK's breach of the charter party due to its failure to pay demurrage costs of the Vessel, Plaintiff has sustained damages in the total principal amount of \$140,725.00 exclusive of interest, arbitration costs and attorneys fees.

8. Despite due and repeated demand, Defendant Hermitage UK has failed to pay the amounts due and owing under the charter party. *Attached hereto as Exhibit "1" are copies of Plaintiff's Final Statement of Freight and demand(s) for payment by Defendant.*

9. Pursuant to the charter party, disputes between the parties are to be submitted to arbitration in London subject to English law. Plaintiff has commenced arbitration of its claim against Defendant Hermitage UK.

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<sup>1</sup> Demurrage is a liquidated damage for delay set forth in the charter party that requires a charterer to pay to owner when the vessel is prevented from the loading or discharging of cargo within the stipulated laytime (i.e., the maximum time permitted in the charter party for cargo operations – here defined by the charter party as \$30,000.00 per day, pro rata.)

10. This action is brought in order to obtain jurisdiction over Defendants and also to obtain security for Plaintiff's claims and in aid of arbitration proceedings.

11. Interest, costs and attorneys' fees are routinely awarded to the prevailing party under English Law. Section 63 of the English Arbitration Act of 1996 specifically allows for recovery of these items as part of an award in favor of the prevailing party. As best as can now be estimated, Plaintiff expects to recover the following amounts at arbitration as the prevailing party:

A.	Principal claim – Demurrage	\$140,725.00
B.	Estimated interest on claim - 3 years at 7.5% compounded quarterly:	\$ 35,131.44
C.	Estimated arbitration costs:	\$ 5,000.00
D.	Estimated attorneys' fees and expenses:	\$ 5,000.00
	<b>Total:</b>	<b>\$185,856.44</b>

12. Upon information and belief, Hermitage UK uses Hermitage Resources as a "paying/receiving agent" or "pass through" entity such that it can insulate itself from creditors relating to its creditors relating to its commercial obligations.

13. Upon information and belief, Hermitage Resources sends payments and/or is directed to send payments on Hermitage UK's behalf where Hermitage Resources has absolutely no contractual relationship and/or debt to Hermitage UK's creditors.

14. Upon information and belief, Hermitage Resources was directed to make a partial payment to Plaintiff in the amount of \$2,270,590.19 for FREIGHT DEVIATION BUNKER payment arising from the Hermitage UK charter party with Plaintiff.

15. Pursuant to Hermitage UK's instructions, on or about April 18, 2006, Hermitage Resources sent a partial payment to Plaintiff in the amount of \$2,270,390.19. *See copy of the April 18, 2006 Wire Transaction Summary annexed hereto as Exhibit 2.*

16. Upon information and belief, Hermitage Resources was directed to make a partial payment to Plaintiff in the amount of \$14,493.53 for demurrage costs arising from the Hermitage UK charter party with Plaintiff.

17. Pursuant to Hermitage UK's instructions, on or about May 2, 2006, Hermitage Resources sent a partial payment to Plaintiff in the amount of \$14,493.53. *See copy of the May 2, 2006 Wire Transaction Summary annexed hereto as Exhibit 3.*

18. It is not general practice in the maritime community, nor anywhere else, for independent companies to make or receive large payments on behalf of other independent companies.

19. Payments sent or received on behalf of another independent company are suggestive of a relationship that is not "arms length."

20. In the further alternative, Defendants are partners and/or joint venturers such that Hermitage Resources is now, or will soon be, holding assets belonging to Hermitage UK, or vice versa.

21. In the further alternative, Defendants are affiliated companies such that Hermitage Resources is now, or will soon be, holding assets belonging to Hermitage UK, or vice versa.

22. The Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure, but, upon information and belief, Defendants have, or will have during

the pendency of this action, assets within this District and subject to the jurisdiction of this Court, held in the hands of garnishees within the District which are believed to be due and owing to the Defendants. *See Affidavit in Support of Prayer for Maritime Attachment annexed hereto as Exhibit 4.*

23. The Plaintiff seeks an order from this Court directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching, *inter alia*, any assets of the Defendants held by any garnishees within the District for the purpose of obtaining personal jurisdiction over the Defendants and to secure the Plaintiff's claim as described above.

**WHEREFORE**, Plaintiff prays:

A. That process in due form of law issue against the Defendants, citing them to appear and answer under oath all and singular the matters alleged in the Complaint failing which default judgment be entered against it;

B. That since the Defendants cannot be found within this District pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, this Court issue an Order directing the Clerk of Court to issue Process of Maritime Attachment and Garnishment pursuant to Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims, attaching all goods, chattels, credits, letters of credit, bills of lading, effects, debts and monies, tangible or intangible, or any other funds up to the amount of \$185,856.44 belonging to, due or being transferred to, from, or for the benefit of the Defendants, including but not limited to such property as may be held, received or transferred in Defendant's name(s) or as may be held, received or transferred for its benefit at, moving through, or within the possession, custody or control of banking/financial institutions and/or other institutions or such other garnishees to be

named, and that all persons claiming any interest in the same be cited to appear and pursuant to Supplemental Admiralty Rule B answer the matters alleged in the Complaint;

C. That the Court retain jurisdiction to compel the Defendants to arbitrate in accordance with the United States Arbitration Act, 9 U.S.C. § 1 *et seq.*;

D. That this Court retain jurisdiction over this matter through the entry of any judgment or award associated with any of the claims currently pending, or which has or may be initiated in the future, including any appeals thereof;

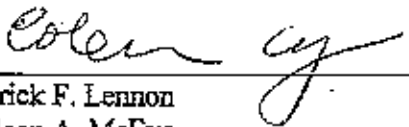
E. That this Court recognize and confirm any arbitration award(s) or judgment(s) rendered on the claims set forth herein as a Judgment of this Court;

F. That this Court award Plaintiff the attorneys' fees and costs incurred in this action; and

G. That the Plaintiff has such other, further and different relief as the Court may deem just and proper.

Dated: New York, NY  
June 9, 2008

The Plaintiff,  
SWISS MARINE SERVICES S.A.

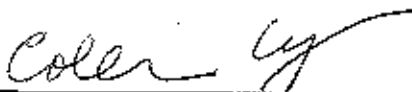
By:   
Patrick F. Lennon  
Coleen A. McEvoy  
LENNON, MURPHY & LENNON, LLC  
420 Lexington Avenue, Suite 300  
New York, NY 10170  
(212) 490-6050 - phone  
(212) 490-6070 - facsimile  
[pfl@lenmur.com](mailto:pfl@lenmur.com)  
[cam@lenmur.com](mailto:cam@lenmur.com)

**ATTORNEY'S VERIFICATION**

State of New York     )  
                                      )     ss.:     City of New York  
County of New York    )

1.     My name is Coleen A. McEvoy.
2.     I am over 18 years of age, of sound mind, capable of making this  
Verification, and fully competent to testify to all matters stated herein.
3.     I am an attorney in the firm of Lennon, Murphy & Lennon, LLC attorneys for the  
Plaintiff.
4.     I have read the foregoing Verified Complaint and know the contents  
thereof and believe the same to be true and accurate to the best of my knowledge, information  
and belief.
5.     The reason why this Verification is being made by the deponent and not  
by the Plaintiff is that the Plaintiff is a business organization with no officers or directors now  
within this District:
6.     The source of my knowledge and the grounds for my belief are the  
statements made, and the documents and information received from, the Plaintiff and agents  
and/or representatives of the Plaintiff.
7.     I am authorized to make this Verification on behalf of the Plaintiff.

Dated:     New York, NY  
           June 9, 2008

  
\_\_\_\_\_  
Coleen A. McEvoy

# EXHIBIT 1



# SWISSMARINE

SERVICES S.A.

SWISSMARINE Services S.A. - 36, Avenue Cardinal-Mermillod - 1227 Carouge - Geneva - Switzerland  
TEL +41 (0) 22 827 18 88 - FAX +41 (0) 22 827 18 99 - sms@swissmarine.ch

Date : Mar 29 2006

Ref: 50625

## FINAL STATEMENT OF FREIGHT

Vessel : GLENBULK A  
Voyage : 15  
C/P Dated : 28/2/06  
Charterers : HERMITAGE UK LTD., LONDON  
              c/o MALLORY JONES LYNCH & ASSOC.  
Loaded : Odessa/Constantza/Bosporus South Bound  
Discharged : Tanjung Pelepas/Port Kelang

	USD	
	Dr.	Cr.
Freight on 92,345.758 mt FUEL OIL, Loaded at ODESSA ÷ CONSTANTZA, 15/3/06 Lumpsum freight	2,200,000.00	
Less : Address commission, 2.5%		55,000.00
Additional Port ops: Constantza (TBF) eur: 66'194.28 exch rate: 1.19151	78,871.15	
Vessels deviation: (time) 36.933 hrs deviation (excl portcall, will be added to laytime calcs) = \$46'166.67	46,166.67	
Vessels deviation: (bunkers) HFO: 15.54mt * 327.50 = \$5'089.35 MDO: 1.98mt * 596.50 = \$1'181.07	2,940.31	
Bunkers consumed at Constantza HFO: 33.58mt * 327.50\$ = \$10'997.45 MDO: 10.24mt * 596.50\$ = \$ 6'108.16	17,105.61	
Demurrage	144,333.33	
Less : Address commission, 2.5%		3,608.33
Payment, 18/4/06		2,270,590.19
Payment, 2/5/06		19,493.55
<b>BALANCE TO YOUR DEBIT</b>		<b>140,725.00</b>
	<b>2,489,417.07</b>	<b>2,489,417.07</b>
	E & O E	

Continued on page 2 ...

# SWISSMARINE

SERVICES S.A.

SWISSMARINE Services S.A. - 30, Avenue Cardinal-Mermillod - 1227 Carouge - Geneva - Switzerland  
TEL. +41 (0) 22 827 18 88 - FAX +41 (0) 22 827 18 99 - sms@swissmarine.ch

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Date : Mar 29 2006

Ref : 50625

## FINAL STATEMENT OF FREIGHT (Page 2)

Vessel : GLENBULK A  
Voyage : 15  
C/P Dated : 28/2/06  
Charterers : HERMITAGE UK LTD., LONDON  
c/o MALLORY JONES LYNCH & ASSOC.

Payment (not later than Apr 10 2006) to :-

Nordea Bank Finland Plc  
London Branch City Place House 55 Basinghall Street London EC2V 5NB UNITED KING-  
DOM

Account No. 0042228601-USD

IBAN GB77NDEA40487842228601 - SWIFT NDEAGB2L

Beneficiary: SwissMarine Services S.A., Geneva, Switzerland

Mentioning GLENBULK A/15

# HOLMAN FENWICK & WILLAN

R. W. Gandy	N. O. Campbell	G. D. Tompkins	J. B. Bowerman	Consul General
G. A. Jones	P. G. Bonner	L. M. Katz	J. P. G. Campbell	W. A. Bishop
R. C. Wynn	A. A. Sandhu	R. J. Wether	E. K. Dausch	Executive in America
H. M. Brown	M. R. Bowman	N. J. Barr	M. S. Wick	J. R. M. O'Sullivan
Lord Byron	F. J. Hester	A. G. Delany	J. C. Gaskman	P. Rees Smith
S. P. Deary	F. A. Whelan	R. J. Mahony	S. H. Roberts	T. J. Jodrell
G. Q. Gray	S. S. Davidson	D. Finney	C. H. Neame	J. A. Dillon
M. J. Livingston	H. W. Dunlop	A. A. Gifford	J. J. Clark	P. J. O'Neill
S. J. Ryle	P. R. Worsley	J. E. Kinnear	J. M. Vandenberg	
P. T. Aston	R. W. Baker	R. C. A. Gogarty	R. O'Leary	
J. P. Duff	C. S. Lockwood	A. H. Johnston	R. H. P. Jurett	
G. B. Breen	C. S. Smart	C. C. Frangoulides	C. S. C. Quinlan	
J. O'Leary	S. W. Williams	E. C. M. T. P. Zeman	D. Koyanaka	
R. G. G. Osborne	A. B. Mackie	A. D. W. Robinson	P. T. Murphy	
J. C. Goring	J. B. Mackay	J. R. Newell	A. S. West	
D. M. Sellar	P. G. Young	S. J. Perrett	A. P. Apostolis	
S. K. Breen	A. A. Linn	R. C. Seckford	D. A. G. Brookes	
T. P. G. Jones	J. L. Dräger	G. J. Veeley	M. R. Adams	
G. M. T. Edgar	A. M. W. Dunn	A. E. Saines	M. Dwyer	
J. C. Finner	R. M. Moylan	A. R. Chamberlain	T. R. H. Stephens	
V. E. Fawcett	H. C. M. Fung	S. J. Breen	A. H. Pinner	
R. N. Hume	R. P. Dugg	D. E. Vassar	S. L. Quince	
G. J. V. Hume	J. G. Webb	P. A. Smith	M. J. Riddington	
S. W. Gonsdon	W. Kerr	D. J. Harty	L. F. Tan	
D. H. Percival	S. Seligson	D. G. Hall	D. H. Harty	
J. A. Tochar	S. J. H. Harty	M. W. Harrison		

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Fax +44 (0)20 7481 0316

holmans@hfw.co.uk  
Telex 8812247 HFWLON  
DX 1069 London City EC3  
VAT No GB 243 4838 55

[www.hfw.com](http://www.hfw.com)

Your Ref

Direct Line

Date

Our Ref BSP/JLW/227

Email

30 April 2008

Hermitage UK Ltd  
2 Wimpole Street  
London  
W1G 0ED

c/o MILF Geneva SA  
15 Rue Du Cendrier CH  
1201 Geneva  
Switzerland

For the attention of Yann Cressent BY EMAIL: [ycressent@mjl.ch](mailto:ycressent@mjl.ch) and BY FAX: 00 41 22 901 3030.

Dear Sirs

Re "GLENBULK A" - C/P dated 24 February 2006

We are instructed by SwissMarine Services SA ("SwissMarine") to recover from you unpaid demurrage of US\$140,725.00 due under the above Charterparty.

SwissMarine have made repeated requests for payment, but these have not been met. Accordingly, we write to advise you that Charterers have appointed Mr Patrick O'Donovan, of Churcham House, 1 Bridgeman Road, Teddington, Middx TW11 9AJ (tel: 020 8977 3666, fax: 020 8977 3052 and email: [patrickodonovan@hotmail.com](mailto:patrickodonovan@hotmail.com)) as their arbitrator in respect of all disputes and differences arising out of or in connection with the above charterparty.

The appointment is on current LMAA terms

Yours faithfully

*Holman Fenwick & Willan*  
**HOLMAN FENWICK & WILLAN**  
HFWLON3163736-1

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A partnership of solicitors and registered foreign lawyers. All partners are solicitors except where otherwise shown.

\* Member of the \* Associated in Court \* Solicitor and Accountants in Court \* Australian Legal Practitioner \* Agents in Belgium and Brussels and Advocate of the Bar of Paris

# EXHIBIT 2

PAGE 01/01

MTN MAC CASHLIT 0041 22821104

Date/Time: 05JUN06 / 14:10:47 Inward SWIFT Message

System Name: \*\*KODA Intercept 2.0\*\*

Department: COST SERVICE

Message Type: MT103

From: CHRSUS33XXX

JPMORGAN CHASE BANK  
NEW YORK, NY

Priority: N

Status: Archived Processed

TSN: 1657235

Message received on 05 JUN 06 at 14:19:53

1:501NDENAGH210XXX083191471512:01030618060418CHRSUS330XXX17560108640604181118  
MT14::20: Sender's Reference  
243330010860:23B: Bank Operation Code  
CRED:32A: Value Date/Currency/Interbank Settled Amount  
060418 USD 2,270,590.19:50E: Ordering Customer  
1070436  
HERNITAGB RESOURCES LIMITED  
CR - 6300 206:52A: Ordering Institution  
BRUDCRGT JMG BELGIUM NV/SA, DEUSSELS, GENEVA GENEVA:59: Beneficiary Customer  
GB77NDENAG04878442238601  
SWISS MARINE SERVICES SA  
CH-GENEVA:70: Remittance Information  
/REB/REF103103288  
KIT GIBNBULK A 15-INV.50625 (FREIGHT  
DEVANTION DIVERKRI):71A: Details of Charges  
SWA:72: Sender to Receiver Info.  
/TMS/BCRVS33-115: (MAC: F0D4R0C2) (CHK: 7180C79669DA1) XRCX100M 1 DXTM18004091991506041812  
1050 F01NDENAGH210XXX0831914715 01030618060418CHRS  
243330010860

# EXHIBIT 3

NIRDEA BANK

\*\*\*MQM Intercept 2.0\*\*\*  
System Name: COST SERVICE  
Department: M0103  
Message Type: CHDSUS3XXX  
From: CHDSUS3XXX

NEW YORK, NY

Priority: N  
 Archived: Processed

Received on 02MAY06 at 11:22:38

REF ID: A60000  
 11:FOJNDAGH713XX0847929950} (2:01G3062106050ZCJMSUS330KX1175950950605021121  
 R14:

Gender's Reference  
2316800122FC

23AB: Track operation code  
CR8B

Value	Date/Currency/Interbank	Settled Amount
060502 USD	19,493.53	

Ordering Customer  
10706438  
HERETITAGE RESOURCES LIMITED  
LONDON UNITED KINGDOM

52A: Ordering Institution  
BRUCHST  
ING BRIGITTE WWS/SA, BRUSSELS, GREENA GREENA

Beneficiary Customer  
GB78002440467842228601  
SWISS BANKING SERVICES SA  
GENEVA SWITZERLAND

Remittance Information  
: 70: /AEB/TRP103121274  
RT GLENBEEK A 15 BALANCE  
AMOUNTPORTCOSTS CONSTANT

71A: Petals of Charges  
\$M

Sender to Receiver Info.  
/INS/BKTH0333

2316800122EC  
2139 701ND8A6B21P8CK0847929950 01030621060562CHMS  
-1)5: (MDC:N992C2284)CHR:13294E770R941) KZCR100N 1  
2316800122EC

# EXHIBIT 4





3. I submit based on the foregoing that the Defendants cannot be found within this District within the meaning of Rule B of the Supplemental Rules for Certain Admiralty and Maritime Claims.

4. Upon information and belief, the Defendants have, or will have during the pendency of this action, tangible and intangible property within this District and subject to the jurisdiction of this Court, held in the hands of in the hands of garnishees within this District, which are believed to be due and owing to the Defendants.

5. This is Plaintiff's first request for this relief made to any Court.

**PRAYER FOR RELIEF FOR ORDER ALLOWING SPECIAL PROCESS SERVER**

6. Plaintiff seeks an Order pursuant to Rule 4(c) of the Federal Rules of Civil Procedure, for an Order appointing Patrick F. Lennon, Kevin J. Lennon, Charles E. Murphy, Nancy R. Peterson, Coleen A. McEvoy, Anne C. LeVasseur or any other partner, associate, paralegal or agent of Lennon, Murphy & Lennon, LLC, or any process server employed by Gotham Process Servers, in addition to the United States Marshal, to serve the Ex Parte Order and Process of Maritime Attachment and Garnishment, together with any interrogatories, upon the garnishee(s), together with any other garnishee(s) who (based upon information developed subsequent hereto by the Plaintiff) may hold assets of, for or on account of, the Defendants.

7. Plaintiff seeks to serve the prayed for Process of Maritime Attachment and Garnishment with all deliberate speed so that it may be fully protected against the potential of being unable to satisfy a judgment/award ultimately obtained by Plaintiff and entered against the Defendants.

8. To the extent that this application for an Order appointing a special process server with respect to this attachment and garnishment does not involve a restraint of physical property, there is no need to require that the service be effected by the Marshal as it involves simple delivery of the Process of Maritime Attachment and Garnishment to the various garnishees to be identified in the writ.

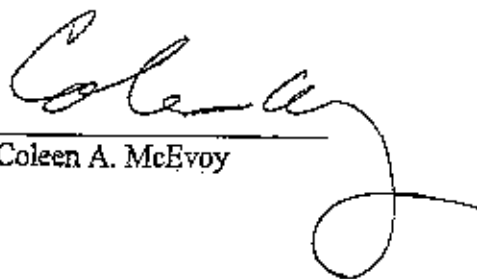
**PRAYER FOR RELIEF TO SERVE LATER IDENTIFIED GARNISHEES**

9. Plaintiff also respectfully requests that the Court grant it leave to serve any additional garnishee(s) who may, upon information and belief obtained in the course of this litigation, to be holding, or believed to be holding, property of the Defendants, within this District. Obtaining leave of Court at this time to serve any later identified garnishees will allow for prompt service of the Process of Maritime Attachment and Garnishment without the need to present to the Court amended Process seeking simply to identify other garnishee(s).

**PRAYER FOR RELIEF TO DEEM SERVICE CONTINUOUS**

10. Further, in order to avoid the need to repetitively serve the garnishees/banks, Plaintiff respectfully seeks further leave of the Court, as set out in the accompanying Ex Parte Order for Process of Maritime Attachment, for any process that is served on a garnishee to be deemed effective and continuous service of process throughout any given day on which process is served and throughout the next day, provided that process is served the next day, and to authorize service of process via facsimile or e-mail following initial *in personam* service.

Dated: June 9, 2008  
Southport, CT

  
\_\_\_\_\_  
Coleen A. McEvoy

Sworn and subscribed to before me  
this 6th day of June, 2008.

  
\_\_\_\_\_  
Notary Public / Commissioner of  
Superior Court